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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|-------------------------------|------------------------|
| 10/522,141 | 09/13/2005 | Ulrich B. Kemp | KEMP2 | 9206 |
| 1444 7590 08/20/2008 BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303 | | | EXAMINER SALVATORE, LYNDIA | |
| | | | ART UNIT 1794 | PAPER NUMBER |
| | | | MAIL DATE 08/20/2008 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|---------------------------------------|------------------------------------|--|
| Office Action Summary | Application No. 10/522,141 | Applicant(s) KEMP ET AL. | |
| | Examiner Lynda M. Salvatore | Art Unit 1794 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-15 is/are pending in the application.
4a) Of the above claim(s) 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4 and 7-9 is/are rejected.
- 7) ☒ Claim(s) 5,6 and 11-15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1794

DETAILED ACTION

Response to Amendment

1. Applicant's amendment and accompanying remarks filed 4/08/08 have been fully considered and entered. Claims 1 and 5-6 have been amended and new claims 11-15 have been added as requested. Applicant's amendments are not found sufficient to overcome the rejections of claims 1, 4, 7-9 for reasons set forth herein below. However, Applicant's remarks are found persuasive to overcome the rejections of claims 5-6. As such, the obviousness rejections of claims 5-6 rejected under 35 U.S.C. 103(a) as being unpatentable over Stein et al., US 6,174,474 in view of Simons, US 5,714,258 are hereby withdrawn. It was noted that claim 2 was not considered on the merits, but canceled claim 3 was included in the rejected claim set. Accordingly, the Examiner is providing Applicant with another Non-Final Office Action.

Claim Objections

2. Claims 1, 2, 4-9 are objected to because of the following informalities: It is suggested to change the word "characterised" to comprising to more closely conform to US practices. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 1794

5. Claim 1 is indefinite because the phrase "wherein the relative solution viscosity reduced as a function of titre is determined according to the formula" is grammatically awkward.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1,2,7,8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Stein et al., US 6,174,474.

The patent issued to Stein et al., teach a process for meltspinning polyester microfilaments (abstract and table of examples). Stein et al., teach producing microfilaments with a maximum titer of 1 dtex (column 4, 5-10). Stein et al., teach a spinning speed ranging from 2000-7000 m/min (column 9, 9-20). With regard to claim 2, Stein et al., teach employing PET (examples, columns 15-16). With regard to the reduced viscosity, Stein et al., teach a relative viscosity of 1.64 (examples, columns 15-16).

With regard to Applicant's formula, it is the position of the Examiner that said formula is not a material part of the claimed invention. With specific regard to the phrase "is spinable at said calculated viscosity", it is the position of the Examiner that the recitation of "spinable" is "capable of" limitation. In other words, the term "spinable" is not considered a definite limitation, but only requires the ability to be spun. Since the prior art meets all of the structural and chemical limitations set forth there in nothing on record to evidence that the polyester of

Art Unit: 1794

Stein et al., would not behave as claimed (e.g., providing a calculated viscosity with a breadth of the claimed fluctuation).

Claim Rejections - 35 USC § 103

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stein et al., US 6,174,474 as applied to claim 1 and further in view of Simons, US 5,714,258.

Stein et al., does not teach adding a viscosity reducing additive, however, the patent issued to Simons teaches spinning a polyester fiber material comprising an aliphatic ester such as ethylene glycol distarate (abstract). Simons teach that said additive reduces the viscosity of the polyester which in turn reduces the power consumption by extruders and meter pumps resulting in longer process life (column 5, 10-15).

Therefore, motivated by the desire to extend the processing life of extruders and meter pumps, it would have been obvious to one having ordinary skill in the art at the time the invention was made to reduce the viscosity of the meltspun polyester microfilaments taught by Stein et al., by adding the fatty acid ester composition taught by Simons.

Allowable Subject Matter

10. Claims 5-6 and 11-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. With regard to claims 5-6, the combination fails to teach the claimed additives. With regard to claims 11-15, the combination of prior art fails to teach the claimed reduced viscosity values. An updated art search did not produce any new substantial art

Art Unit: 1794

for which to base a rejection and presently no motivation exists to combine references to form an obviousness type rejection.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda M. Salvatore whose telephone number is 571-272-1482. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lynda Salvatore/
Primary Examiner
Art Unit 1794
8/15/08

Application/Control Number: 10/522,141

Page 6

Art Unit: 1794